

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4075 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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NAVA WADAJ ZUPADA BHAVSAMITI - Petitioner(s)
Versus
UNION OF INDIA & 3 - Respondent(s)

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Appearance :

MRS MADHUBEN SHARMA for Petitioner(s) : 1, MEENA VYAS for
Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
MS SEJAL K MANDAVIA for Respondent(s) : 2 - 3.
MR TUSHAR MEHTA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 19/04/2006****ORAL JUDGMENT**

1. By way of this petition under Article 226 of the Constitution of India, the petitioner on behalf of the hutment dwellers who are in occupation and possession of the part of the land situated near Nava Wadaj, Rajip, old Dholka Railway Line has prayed for an appropriate writ, direction or order directing the respondent Nagarpalika to provide three gates on the road

side keeping appropriate length and height. The petitioner has also further prayed for directing the Railway Authority to consider the claim of the applicant in priority for giving land on lease to the occupants / hutment dwellers.

2. Ms.Sharma, learned advocate appearing on behalf of the petitioner has submitted that on one side there is garden and thereafter leaving behind 400 meter, there is gate and the respondent Corporation has constructed the compound wall and the persons who are residing on the garden side have to pass through 400 meter and thereafter the gate will come by which it is highly inconvenient to the occupants and therefore, it is requested to direct the respondents, more particularly, the respondent No.4 - Nagarpalika to provide three gates at different intervals i.e. at least on every 10 ft on the road side.

3. Affidavit-in-reply is filed on behalf of the respondent No.4 - Nagarpalika. It is submitted that with a view to see that there is no hindrance to the traffic, compound wall is constructed and as such, all the occupants are in illegal occupation and possession of the land in fact belonging to the Railway Authority and as such, they have no fundamental rights and therefore, it is submitted that for such relief, a petition under Article 226 of the Constitution of India is not maintainable.

4. It is not in dispute that there is compound wall and that a gate is provided. However, it is the contention on behalf of the petitioner that occupants who are on garden side have to travel 400 meter and thereafter, there will be gate which is said to be causing inconvenience. At the outset, it is required to be noted that so far as the occupants are concerned, they are in illegal and unauthorised occupation of the Railway

property land and that, they cannot insist that on every 10 ft., there should be a gate. As such, they got not vested rights even to continue as observed by the learned Single Judge in its order dated 18.8.2004 passed in Special Civil Application No.6341 of 1992. The petitioners and the occupants cannot insist that they must have gates at intervals at every 10 ft. As such, no right and / or any fundamental rights of the petitioner is being infringed by actions of the respondents. The compound wall is constructed to see that there is no hindrance to the traffic and merely because the gate is provided at the distance of 400 met., that is not the ground to ask for many gates, otherwise, every occupant of the area will pray that there should be a gate in front of his hut and/or residential premises.

5. In view of the above discussion, there is no substance in the present Special Civil Application and the same is required to be

dismissed and is accordingly dismissed.

6. Notice is discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

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